

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #02	CCRB Case #: 202100606	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/04/2020 7:45 PM	Location of Incident: Brook Avenue and East 136th Street	Precinct: 40	18 Mo. SOL 12/4/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 01/25/2021 10:52 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 01/25/2021 10:52 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Migliaccio	25698	964169	PSA 7
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Deck	08350	947736	SRG 1
2. LSA Eric Dym	00000	933762	PSA 7
3. SGT Steven Counihan	4669	952620	PSA 7
4. POM Nicholas Rios	06583	955377	PSA 7
5. Terence Monahan		876747	
6. AC Kenneth Lehr	00000	891719	PBBX

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer struck § 87(2)(b) with a baton.	
B. POM John Migliaccio	Force: Police Officer John Migliaccio used pepper spray against § 87(2)(b)	
C. POM John Migliaccio	Force: Police Officer John Migliaccio used pepper spray against § 87(2)(b)	
D. POM John Migliaccio	Force: Police Officer John Migliaccio used pepper spray against § 87(2)(b)	
E. POM John Migliaccio	Force: Police Officer John Migliaccio used pepper spray against individuals.	
F. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
G. An officer	Force: Officers used a chokehold against § 87(2)(b)	
H. An officer	Force: Officers restricted § 87(2)(b) breathing.	

Case Summary

On January 25, 2021, attorney § 87(2)(b) filed this complaint online with the CCRB (Board Review 01) on behalf of her client § 87(2)(b).

On June 4, 2020, at approximately 8:00 p.m., § 87(2)(b) his friend § 87(2)(b) and two other protesters, § 87(2)(b) and § 87(2)(b) were in a large crowd of protesters that was kettled by officers at East 136th Street and Brook Avenue in the Mott Haven neighborhood of the Bronx. An unidentified officer swung a baton toward the protesters from across a row of officers on bicycles, striking § 87(2)(b) (**Allegation A – Force: Baton as Club,** § 87(2)(g)). Officers on top of and around a parked car swung their batons, striking § 87(2)(b) and other protesters several times, while screaming "Get the fuck back" (addressed in CCRB case § 87(2)(b)). Police Officer John Migliaccio of PSA 7 sprayed his pepper spray into a crowd that included § 87(2)(b) and § 87(2)(b) (**Allegations B, C, D, and E – Force: Pepper Spray,** § 87(2)(g)). An unidentified officer screamed, "Welcome to the fucking Bronx!" (**Allegation F – Discourtesy: Word,** § 87(2)(g)). § 87(2)(b) went down to the ground and an officer knelt on § 87(2)(b) spine between his shoulder blades (**Allegations G and H – Force: Chokehold, Restricted Breathing;** § 87(2)(g)). § 87(2)(b) and § 87(2)(b) were placed in flex cuffs and later released with summonses for violating the mayor's 8:00 p.m. curfew (Board Review 02, 03).

This case involves allegations of kettling and other concerted enforcement actions performed under the command and supervision of the then Chief of Department Terrance Monahan and Assistant Chief Kenneth Lehr. These allegations are being addressed in case § 87(2)(b). Allegations of force (Allegations A, B, C, D, E, G, and H) were pleaded and investigated in this case because they involved allegations of force that went beyond the reasonable scope of Chief Monahan's and Assistant Chief Lehr's order to kettle the crowd. All other alleged uses of force were subsumed into § 87(2)(b).

Two requests for body-worn camera (BWC) footage for this case were returned with negative results (Board Review 22, 23). Police Officer Migliaccio did not film the incident on his BWC because it broke on June 2, 2020, as per his memo book (Board Review 24). Over 50 BWC videos from other officers at the scene (Board Review 09), which were received for other complaints from this protest, were reviewed.

Findings and Recommendations

Allegation (A) Force: An officer struck § 87(2)(b) with a baton.

Allegation (F) Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation (G) Force: An officer used a chokehold against § 87(2)(b)

Allegation (H) Force: An officer restricted § 87(2)(b) breathing.

Known facts and general descriptions

§ 87(2)(b) provided a telephone statement for CCRB case § 87(2)(b) on July 15, 2020 (Board Review 04), but she did not follow through with a full-length interview. § 87(2)(b) was interviewed on February 5, 2021 (Board Review 05). § 87(2)(b) was interviewed on March 13, 2021 (Board Review 06). Voicemails were left for witness § 87(2)(b) who did not follow up to schedule an interview appointment. Contact was unable to be established with § 87(2)(b) in CCRB case § 87(2)(b). Police Officer Migliaccio was interviewed on February 3, 2021 for CCRB case § 87(2)(b) which addresses allegations that occurred at the same time and location as those addressed in this case (Board Review 12), and he was interviewed for this case on June 14, 2021 (Board Review 13). Police Officer Joseph Deck of SRG 1 was interviewed on July 7, 2021 (Board Review 14).

§ 87(2)(b) stated that after a group of officers on bicycles formed a line at Brook Avenue to prevent the protest from advancing, officers began swinging their batons toward the crowd from behind the line of bicycle officers, and one of these baton swings struck him. § 87(2)(b) was unable to describe the officer who struck him because his view of this officer was blocked by the bicycle officers.

§ 87(2)(b) stated that before he went down to the ground, he heard an unknown officer in a blue uniform say, “Welcome to the fucking Bronx.” After § 87(2)(b) went down to the ground, an unknown officer placed his knee between § 87(2)(b) shoulder blades onto his spine with “the full weight of his body” and immediately placed § 87(2)(b) into flex cuffs “extremely tightly.” The knee was on § 87(2)(b) back for “a second or two.” § 87(2)(b) believed he struggled to breathe while the officer’s knee was in his back, but he noted he the officer did not significantly restrict his breathing, and that he was also still suffering from the effects of the pepper spray (see **Allegation B**). § 87(2)(b) was unable to provide physical descriptions of either of these officers.

Neither § 87(2)(b) nor § 87(2)(b) notice of claim (Board Review 27) mentioned seeing officers swing their batons from behind a row of officers on bicycles, hearing officers use profanities, or seeing an officer place a knee on anyone’s back.

BWC

Two BWC requests for this case were returned with negative results. However, over 50 BWC videos (Board Review 09) from other officers at the scene who began recording before 8:14:57 p.m. (the moment when § 87(2)(b) is seen standing in cuffs), which were received for other complaints from this protest, were reviewed. Numerous cell phone, internet, TARU, and surveillance videos were obtained of this incident as part of this case and the investigations into the other related CCRB cases that were part of this protest (Board Review 09).

In Police Officer Dennis Gannon’s BWC footage (Board Review 07), at runtime 01:22 (timestamp 8:13:22 p.m.), an officer is seen swinging a baton from across the row of SRG bicycle officers. The baton appears to strike § 87(2)(b) red hard hat. Only the baton and the officer’s arm are visible in this video, and none of the officer’s identifying markings or features are visible. At runtime 01:38 (timestamp 8:13:38 p.m.), § 87(2)(b) appears to fall to the ground.

In Lieutenant Andrew Johnson’s BWC footage (Board Review 08), at runtime 10:35 (timestamp 20:14:57), § 87(2)(b) – the individual in the blue hard hat, gray shirt, and black face mask – is seen standing while two officers are holding his arms, which appear to be cuffed behind his back. The officers’ identifying markings or features are not visible in this video.

None of the remaining videos capture officers striking § 87(2)(b) with a baton from across the SRG bicycle officers, kneeling on § 87(2)(b) back, or saying, “Welcome to the fucking Bronx.”

NYPD Documents Reviewed

Requests for any Threat, Resistance, and Injury Report prepared for § 87(2)(b) (Board Review 10) or § 87(2)(b) (Board Review 11) were returned with negative results. There are no known NYPD documents that identify the officer(s) who allegedly used force against § 87(2)(b) or § 87(2)(b).

Concurrent Investigations

While there are several other investigations, both within the CCRB and in other City and State investigative bodies, that are investigating the overall incident or other specific portions of it, there are no known concurrent investigations specifically involving § 87(2)(b) § 87(2)(b) or § 87(2)(b) regarding this incident.

Ranking Officers

This case involves allegations of kettling and other concerted enforcement actions performed under the command and supervision of the then Chief of Department Terrance Monahan and Assistant Chief Kenneth Lehr. These allegations are being addressed in case § 87(2)(b).

Officers Interviewed

Police Officer Migliaccio was interviewed on February 3, 2021 for CCRB case § 87(2)(b) (Board Review 12), and he was interviewed for this case on June 14, 2021 (Board Review 13). Police Officer Migliaccio stated that he used his body to brace the bicycle officers so the crowd would not push through them. He did not recall whether he or any other officer swung a baton while behind the bicycle officers. Police Officer Migliaccio did not recall whether he was involved in the apprehension of § 87(2)(b) or § 87(2)(b). He did not recall how many people he handcuffed, or what any of them looked like. He did not believe he ever placed his knee in anyone's back. He did not believe anyone he apprehended appeared to have trouble breathing, and he did not recall whether anyone he helped arrest complained of having trouble breathing. Police Officer Migliaccio "probably" did not say or hear any other officer say, "Welcome to the fucking Bronx."

Police Officer Deck was interviewed on July 7, 2021 (Board Review 14). Police Officer Deck stated that when he arrived at the scene, he held each end of his baton with both hands and pushed against several rows of officers to "hold the line" and keep the officers from being pushed over. He denied swinging his baton into the crowd and saying, "Welcome to the fucking Bronx." He did not recall whether he helped place anyone in flex cuffs. Police Officer Deck stated that he first encountered § 87(2)(b) approximately one hour after the incident began, when § 87(2)(b) was seated in flex cuffs with a group of other arrested protesters who were awaiting transport from the scene to be summonsed. He later issued the summons to § 87(2)(b) at Queens Central Booking.

§ 87(2)(g)

Allegation (B) Force: Police Officer John Migliaccio used pepper spray against § 87(2)(b)

Allegation (C) Force: Police Officer John Migliaccio used pepper spray against § 87(2)(b)

Allegation (D) Force: Police Officer John Migliaccio used pepper spray against § 87(2)(b)

Allegation (E) Force: Police Officer John Migliaccio used pepper spray against individuals.

§ 87(2)(b) stated that after he was struck with batons by officers who were on top of a vehicle near the southwest corner of East 136th Street and Brook Avenue (addressed in CCRB case § 87(2)(b)) an officer moved toward the officers on the vehicle and indiscriminately released pepper spray into the crowd. The pepper spray landed in § 87(2)(b) eyes and covered all of his exposed skin. § 87(2)(b) did not see the officer who pepper sprayed him.

§ 87(2)(b) stated that as she attempted to get on the sidewalk on the south side of East 136th Street, she felt something wet on her face and realized that she had been pepper sprayed, and her eyes began to burn. The pepper spray came from the south side of East 136th Street.

§ 87(2)(b) stated that he could not smell anything because he wore a half-face respirator, but other protesters said officers were using pepper spray. § 87(2)(b) did not believe he would have been able to

feel the effects of pepper spray due to his respirator and goggles. § 87(2)(b) did not see any officer release pepper spray into the crowd.

A notice of claim filed by § 87(2)(b) (Board Review 27) states, “John Doe 86 (a white man), who was standing on the far side of the car next to the rear right passenger door, reached his arm across the car and sprayed § 87(2)(b) in the face with pepper spray. The pepper spray also hit others.”

A cell phone video linked to IA #84 (Board Review 04) begins with an officer’s right arm releasing pepper spray into the crowd from behind a car. The officer moves his arm from side to side while discharging the pepper spray toward the crowd for approximately three seconds. There is a tattoo on the inner right bicep of this arm. At runtime 00:26, an officer’s left arm, coming from the same position as the right arm that discharged the pepper spray 20 seconds earlier, is seen pulling an officer in a white uniform off the car. This arm bears a half-sleeve tattoo that covers the forearm.

An internet video linked to IA#101 (Board Review 15) shows Police Officer Migliaccio pushing § 87(2)(b). Police Officer Migliaccio has a half-sleeve tattoo on his left forearm. Police Officer Migliaccio’s inner right bicep is not seen in this video, but no other tattoos are visible on Police Officer Migliaccio’s right arm.

Before watching video footage, Police Officer Migliaccio stated that the protesters were screaming and throwing objects and liquids at the officers and refusing orders to disperse. At one point, the protesters pulled an officer into the crowd by his baton. Police Officer Migliaccio did not recall releasing pepper spray into the crowd and did not see any other officer do so. He smelled pepper spray in the air and was coughing from it, but he did not know where the pepper spray was coming from. Police Officer Migliaccio did not recall whether he received any specific training in the use of pepper spray for disorder control, or in the use of pepper spray within a large crowd. Police Officer Migliaccio did not recall whether any supervisors gave him any instructions to discharge his pepper spray.

After watching the cell phone video linked to IA #84, Police Officer Migliaccio stated that he did not know whether he released pepper spray into the crowd. Police Officer Migliaccio did not know if it was his arm that is seen in the video holding the pepper spray, but he noted that the tattoo that is seen on the arms inner right bicep could be his. Police Officer Migliaccio also said he has tattoos on his left arm, but he did not know whether he was the officer who is seen pulling the officer in the white uniform off the car. He acknowledged that while the officers were on top of the car, he was on the sidewalk behind or adjacent to the car.

After watching the internet video linked to IA #101, Police Officer Migliaccio identified himself as the officer who pushed § 87(2)(b).

Police Officer Migliaccio’s NYPD Training History on the NYPD Officer Profile Website (<https://nypdonline.org/link/2>) contains no record of Police Officer Migliaccio having been trained in the use of pepper spray for disorder control.

Patrol Guide Procedure 221-07 (Board Review 16) states that an officer shall “avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control,” unless the officer is specifically trained in the use of pepper spray for disorder control and is directed to do so by a supervisor.

Police Officer Migliaccio stated that he has tattoos on his right inner bicep and his left forearm, and that he was standing next to the parked vehicle while other officers were on top of it. The investigation has therefore determined by a preponderance of the evidence that the arm seen in the video linked to IA #84 that pepper sprays the crowd is Police Officer Migliaccio’s. Police Officer Migliaccio did not recall

whether he discharged his pepper spray during the incident. He did not recall whether he was trained in the use of pepper spray for disorder control, nor whether any supervisor directed him to use pepper spray, and his NYPD Training History contained no record of him receiving any such training. § 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED] [REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED] [REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED] [REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED] [REDACTED]
- Police Officer John Migliaccio has been a member of service for four and has been a subject in six other CCRB complaints and 20 other allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) and § 87(2)(b) each filed a Notice of Claim with the City of New York claiming excessive force and unlawful arrest, and seeking damages determined by a jury as redress (Board Review 18). § 87(2)(b) completed his 50-H hearing on February 5, 2021 (Board Review 25), and § 87(2)(b) completed his on March 22, 2021 (Board Review 26).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

Squad: 02

Investigator:	<u>Jean-Paul Lozada</u>	<u>SI Jean-Paul Lozada</u>	<u>10/26/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>AOA</u>	<u>IM Alexander Opoku-Agyemang</u>	<u>10/26/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date